Supreme Court, U.S.
FILED
JUL 2 - 2003
OFFICE OF THE CLERK

No. 02-1060

IN THE

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

ROBERT S. LIDSTER,

Respondent.

On Writ of Certiorari to the Supreme Court of Illinois

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Is a checkpoint with a primary purpose of obtaining information from motorists about a recent fatal hit and run accident contrary to the rule of *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000)?

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The mobility and autonomy of automobiles pose special problems for law enforcement. Sometimes brief suspicionless seizures of vehicles are necessary to address a pressing social problem like illegal immigration or drunk driving. This makes

1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Both parties have given written consent to the filing of this brief.

automotive checkpoints an important exception to the rule that seizures must be supported by individualized suspicion.

In *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000), this Court recognized limits to the government's authority to conduct checkpoints. Automotive checkpoints motivated by a general interest in crime control, such as interdicting drugs, were too dangerous to the Fourth Amendment to be permitted. In the present case, the Illinois Supreme Court has expanded *Edmond* far beyond what this Court intended or good sense allows. Allowing *Edmond* to strike down the informative checkpoint in this case strips the police of the authority to conduct checkpoints that are reasonable under a balancing of public and private interests. The hamstringing of this important public safety procedure is contrary to the interests of public safety that CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

On August 30, 1997, police set up a checkpoint on North Avenue in Lombard, Illinois. *People* v. *Lidster*, 779 N. E. 2d 855, 856 (Ill. 2002). The checkpoint was set up to get information from passing motorists concerning a fatal hit and run accident that took place at the same spot exactly one week before at approximately the same time of the day. See *ibid.* This time coincided with people leaving work near the scene of the accident. See Pet. for Cert. 1.

Officers at the checkpoint distributed flyers to alert drivers about the accident and the need for information. *Lidster*, 779 N. E. 2d, at 856. All east-bound vehicles were stopped for 10 to 15 seconds, so that officers could hand each driver a flyer about the accident. Drivers were not asked for license or registration, nor was any effort made to check for seatbelt violations. See Pet for Cert. 2. Although the checkpoint was not publicized, the accident was well known in the area. See *ibid.*

Detective Ray Vasil, wearing an orange reflective vest with the word "Police" on it, stood about 15 feet from the checkpoint. *Lidster*, 779 N. E. 2d, at 856. As each vehicle pulled up to him, he handed a flyer to the driver. The defendant, Robert Lidster, drove up to the checkpoint in his Mazda minivan, nearly hitting Detective Vasil. Detective Vasil then asked Lidster for his driver's license and insurance card. See *ibid.* Smelling alcohol on Lidster's breath, Detective Vasil directed him to a side street, where Detective Roy Newton administered several sobriety tests. See *ibid.*

The defendant failed several of the tests and was arrested. See *ibid.* The trial court found the defendant guilty of driving under the influence of alcohol and sentenced him to one year of conditional discharge. *Id.*, at 857. Lidster also had to participate in counseling, complete a 14-day " 'Sheriff's Work Alternative Program,' " and pay a $200 fine. *Ibid.*

An Illinois intermediate appellate court reversed the conviction, holding that the checkpoint violated the Fourth Amendment under *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000). *Lidster*, 779 N. E. 2d, at 856. The Illinois Supreme Court affirmed, also holding that the checkpoint violated *Edmond*. See *id.*, at 861.

This Court granted certiorari on May 5, 2003.

SUMMARY OF ARGUMENT

This case turns on understanding the limits of *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000). Although privacy is very limited in the automobile, *Edmond* confirmed that the police do not have unlimited authority to detain motorists. An automotive checkpoint that does not contain its own limits will not pass constitutional muster.

This Court has upheld checkpoints that are aimed against crime when the justifications for these checkpoints also limit their potential growth. The rationale for immigration check-

points did not extend beyond some traffic arteries near our border with Mexico, and sobriety checkpoints were limited to the roads. The rationale for the drug checkpoint in *Edmond* could not be constrained. If accepted, the rationale for drug checkpoints would have extended much further than its immediate purpose. Drugs are not tied to the roads, so the checkpoints' rationale would extend to areas where drugs are manufactured or sold. Since illegal drugs are not the only serious crime problem, this rationale would also extend to other serious crimes such as murder or organized crime. Because the drug checkpoint's potential growth threatened the Fourth Amendment, it was struck down.

The informative checkpoint in this case is no threat to the Fourth Amendment. Unlike the drug checkpoint in *Edmond*, it carries its own limits. This checkpoint is limited to one automotive crime, tying it closely to the roads. The officers conducting the checkpoint also had little discretion in setting its time and place. Since the checkpoint's rationale extends only to a relatively small number of serious automotive offenses, there is no threat of its rationale spreading through the Fourth Amendment like the drug checkpoint in *Edmond*.

The minimal intrusiveness of the informative checkpoint further distinguishes this case from *Edmond*. Unlike all prior checkpoint and special needs search cases, this case does not involve an adversarial relationship between the authorities and individuals who are stopped. The police here are not trying to catch drivers committing crimes. Instead, they are simply informing drivers about a fatal accident that took place on the street where they are driving. This is inherently less intrusive than the adversarial checkpoints previously before this Court.

An intrusion can be so minimal as to no longer warrant Fourth Amendment scrutiny. The seizure in this case approaches that point. It was a 10- to 15-second stop that allowed the police to give a leaflet about the accident to drivers. Few stops will be as unintrusive as this, and it is reason enough to distinguish *Edmond* from this case.

This checkpoint is reasonable in light of the balance between public need and private intrusion. The police are attempting to find out from the public about a proven highway menace—someone who kills and leaves the scene of the accident. Since the only two identifiable witnesses are gone, it makes sense to publicize the incident in order to find out what happened. The checkpoint is an efficient, targeted effort to find someone who saw what happened. In light of the checkpoint's minimal intrusion, it is a reasonable effort. The Fourth Amendment requires no more.

ARGUMENT

I. *Edmond* only prevented a checkpoint of potentially universal application.

Checkpoints[2] are a limited, but essential, component of public safety. While the automobile is a great source of freedom and convenience to individuals, it also poses significant public safety concerns. The car's mobility and independence can be a boon to criminals, while its power turns every driver into a potential menace.

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2. The Illinois Supreme Court called the operation a "roadblock." See *People* v. *Lidster*, 779 N. E. 2d 855, 856 (Ill. 2002). This was inaccurate. A roadblock is the complete blocking of a road in order to prevent any traffic from continuing on the path. It is "[a] barricade or an obstruction across a road set up to prevent the escape or passage, as of a fugitive or enemy troops." American Heritage Dictionary 1559 (3d ed. 1992). What was done in this case, *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000), *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444 (1990), or *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976) was not a roadblock, as passage through the obstruction was possible after dealing with the authorities. It was a checkpoint. The complete blocking of passage makes a roadblock a more intrusive seizure than a checkpoint. Calling checkpoints "roadblocks," see, *e.g.*, *Ferguson* v. *Charleston*, 532 U. S. 67, 83, n. 21 (2001), inaccurately prejudices them and should be avoided.

These problems give the automobile a special status under the Fourth Amendment. Drunk driving's heavy toll strongly supported the constitutionality of drunk driving checkpoints, see *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 451 (1990), and the automobile's aid to illegal immigration helped support illegal alien checkpoints. See *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 552 (1976). The automobile's mobility justifies suspending the warrant requirement when police have probable cause to search a car. See *Carroll* v. *United States*, 267 U. S. 132, 153-154 (1925). Its relative openness and substantial regulation also work to diminish the expectation of privacy of a vehicle's occupants. See *South Dakota* v. *Opperman*, 428 U. S. 364, 368 (1976). These combine to sharply reduce the coverage of the Fourth Amendment in the automobile. For example, one commentator hostile to recent Fourth Amendment automotive decisions has concluded that "it is no exaggeration to say that in cases involving cars, the Fourth Amendment is all but dead." Harris, Car Wars: The Fourth Amendment's Death on the Highway, 66 Geo. Wash. L. Rev. 556, 556 (1998).

This is an exaggeration. Automobile occupants do not lose all expectations of privacy. See *Delaware* v. *Prouse*, 440 U. S. 648, 662 (1979). This was demonstrated when this Court struck down a drug interdiction checkpoint in *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000). While important, *Edmond* is not a landmark break from precedent. Although this decision confirmed that there were limits on the use of checkpoints, *Edmond* is much narrower than the reading given to it by the Illinois Supreme Court.

Analysis of *Edmond* centers on the checkpoint's purpose. The "primary purpose" of the checkpoint in *Edmond* was "the discovery and interdiction of illegal narcotics." *Id.*, at 34. Allowing a "general interest in crime control" to justify a checkpoint posed a grave threat to the Fourth Amendment. Since most searches and seizures are intended to control crime, upholding this rationale for suspicionless seizures "would do

little to prevent such intrusions from becoming a routine part of American life." *Id.*, at 42. "The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *Martinez-Fuerte*, 428 U. S., at 554. For most searches and seizures, the individualized suspicion requirement guards against government arbitrariness. See *New Jersey* v. *T.L.O.*, 469 U. S. 325, 342, n. 8 (1985). Suspicionless checkpoint seizures require something else to limit the government.

In *Martintez-Fuerte*, the special problems presented by illegal immigration created both a need for the checkpoints and an inherent limit on the government's authority to seize drivers and passengers. Policing our long and porous border for illegal aliens presented formidable challenges to the authorities. See 428 U. S., at 552. Automobiles substantially compounded the problem, which made checkpoints an integral part of the Custom Service's efforts to control immigration. See *id.*, at 552-553. Because many of the checkpoints had to be on major traffic arteries, requiring individualized suspicion was impractical in light of the heavy traffic flowing through the checkpoints. See *id.*, at 557. Therefore, the government had a real need for the suspicionless checkpoints.

While these needs helped make the constitutional case for immigration checkpoints, the importance of the public interest is not enough by itself to "justify a regime of suspicionless searches or seizures." *Edmond*, 531 U. S., at 543. It is necessary to "look more closely at the nature of the public interests that such a regime is designed principally to serve." *Ibid.* In *Martinez-Fuerte*, the checkpoint was constitutional because the interest in limiting immigration necessarily limited the spread of similar checkpoints.

The *Martinez-Fuerte* checkpoints were aimed at curbing illegal immigration from Mexico. See 428 U. S., at 552. This focus was rational since Mexico was estimated to be the source of 85% of all illegal immigration, see *id.*, at 551, and our long

southern border with Mexico made automobiles an ideal means of unauthorized entry. Therefore, immigration checkpoints were necessarily limited to a relative handful of strategic areas near our southern border with Mexico. See *id.*, at 552. It would make no sense to set up checkpoints for illegal immigrants from Mexico in places like Nebraska, Hawaii, New York, or Florida.

Because immigration checkpoints could not spread throughout the country unabated, the overall intrusiveness of the regime was minimized. While one or two checkpoints may not be too intrusive, the cost to privacy rises rapidly as they become widespread. A checkpoint capable of universal application also runs the risk of arbitrary placement. Since police do not have unlimited resources to conduct checkpoints, some choice is necessary for their placement. Although "neutral criteria" for the timing and placement of searches and seizures reduces this risk, see *Marshall* v. *Barlows, Inc.*, 436 U. S. 307, 323 (1978), neutral criteria may be impossible to develop when the problem addressed by the checkpoint is sufficiently pervasive. The narrow focus of the checkpoint in *Martinez-Fuerte* prevents this and distinguishes it from *Edmond*.

What most concerned the *Edmond* Court was the potentially unlimited application of drug checkpoints. This fact is key to understanding that case and why narcotics checkpoints differ from other valid checkpoints. There is a superficial similarity between *Edmond* and the checkpoints upheld by this Court. The two valid checkpoints both prevented crime—illegal immigration and drunk driving. See *Edmond*, 531 U. S., at 42. The problem is that leaving the analysis at this level of generality would eviscerate the Fourth Amendment. See *ibid.*

Since drugs are a problem everywhere, upholding drug checkpoints would allow the police to establish them wherever and whenever they chose. "Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life."

Edmond, 531 U. S., at 42. The general rule is that searches and seizures must be supported by individualized suspicion. Suspicionless intrusions such as checkpoints or "special needs" searches are an exception to this rule. See *Ferguson* v. *Charleston*, 532 U. S. 67, 81 (2001). The broad purpose of drug checkpoints would turn the exception into the rule.

The other checkpoint upheld by this Court, the drunk driving checkpoint of *Sitz*, is not as easily compatible with *Edmond* as immigration checkpoints. Drunk driving is a national problem. See *Sitz*, 496 U. S., at 451. For example, arrests for driving under the influence almost equal the arrests for drug abuse violations. See U. S. Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics 2001, Table 4.1, p. 342 (2002). Therefore, the geographical controls found in *Martinez-Fuerte* are not as pronounced in *Sitz*. After *Sitz*, a drunk driving checkpoint can be set up on almost any highway.

Edmond distinguished *Sitz* on the basis of the sobriety checkpoint's close tie to the roads. Driving under the influence is closely connected to the highways and streets. "Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate." *Edmond*, 531 U. S., at 43. Narcotics offenses lacked this connection, which distinguished *Edmond* from *Sitz*. See *ibid.* While sobriety checkpoints were tied to the road through drunk driving, narcotics checkpoints lacked any effective limits. The *Edmond* Court's rationale for distinguishing *Sitz* shows that *Edmond* is a limited decision. While sobriety checkpoints were capable of wide application, that alone did not justify their invalidation under *Edmond*. What distinguished *Sitz* from *Edmond* is the greater threat to the Fourth Amendment posed by the narcotics checkpoints. It is this threat that lead to narcotics checkpoints being *per se* invalid.

The problem with the narcotics checkpoint is that its rationale cannot be confined to the roads or to narcotics. Ships, trains, airplanes, bicycles, and feet are all used to transport drugs. Had *Edmond* been decided the other way, then suspicionless seizures in these contexts would be equally valid.

Transportation is only one part of the drug problem. Since drugs are not tied to the roads, the checkpoint's rationale could apply to procedures designed to combat the manufacturing, sale, or use of narcotics in buildings, street corners, private residences, or anywhere else. There is no drug exception to the Fourth Amendment. Cf. *Richards* v. *Wisconsin*, 520 U. S. 385, 393-394 (1997) (rejecting a drug exception to the knock and announce requirement). The checkpoint rejected in *Edmond* threatened to create one.

The risk to the Fourth Amendment in *Edmond* did not stop at drugs. Murder, rape, organized crime, and child abuse are among the many serious problems covered by criminal law. If drugs could justify suspicionless seizures, then so could these or other similarly serious criminal problems. The rationale of the narcotics checkpoint, if accepted, threatened to swallow much of the Fourth Amendment. This is why a "primary purpose . . . to advance 'the general interest in crime control,' " *Edmond*, 531 U. S., at 44 (quoting *Prouse*, 440 U. S., at 659, n. 18), was constitutionally unacceptable.

The *Edmond* Court did not categorically exclude crime control interests from justifying roadblocks or checkpoints. Certain emergencies, such as an "imminent terrorist attack" or a "dangerous criminal" fleeing "by way of a particular route" are crime control interests that could constitutionally justify a roadblock. See 531 U. S., at 44. However, even these must be "appropriately tailored," *ibid.*, to ensure that there are constraints on the government's ability to conduct suspicionless searches or seizures.

Edmond is about limits. A checkpoint that does not suggest its own limits is unlikely to withstand scrutiny. As *Edmond*

demonstrated, it is necessary to get underneath the surface of the checkpoint's primary purpose in order to make this determination. Simply labeling an interest as general crime control and striking the checkpoint down without further analysis is a "substitution of words for analysis." *United States* v. *White*, 401 U. S. 745, 786 (1971) (Harlan, J., dissenting). Unfortunately, this was the extent of the Illinois Supreme Court's reasoning. Closer examination of the checkpoint in this case finds something much more limited than the threat to devour the Fourth Amendment that was struck down in *Edmond*.

II. The limited purpose and minimal intrusion of the informative checkpoint in this case distinguishes it from *Edmond*.

A. Intent.

Accurate analysis of the checkpoint in this case begins by understanding what happened on August 30, 1997, on North Avenue in Lombard, Illinois. The police conducted an informative checkpoint. Its purpose was to inform motorists of a specific hit and run homicide that took place on the same street one week ago in order to get leads on the perpetrator. This checkpoint was no different than officers asking the community for information through the newspapers, television, or door-to-door canvassing.

The informative checkpoint in this case is unique among the suspicionless search or seizure cases before this Court. All three checkpoint cases involved attempts to find evidence of criminality from the stopped motorists, or to deter people from using vehicles to commit crimes. See *City of Indianapolis* v. *Edmond*, 531 U. S. 32, 34 (2000) (illegal narcotics); *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 447 (1990) (drunk driving); *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 543 (1976) (illegal immigration). Special needs searches are similar. Sometimes the search is intended to find criminal evidence from the target of the search. See *Griffin* v. *Wiscon-*

sin, 483 U. S. 868, 870 (1987) (probation search). While the results of other special needs searches are not turned over to the police, the searches have adverse consequences for those being searched. See, *e.g.*, *Board of Education* v. *Earls*, 536 U. S. 822, 833 (2002) (failing drug test limits middle and high school students' ability to participate in extracurricular activities); *Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646, 651 (1995) (possible suspension from school sports for positive drug test); *National Treasury Employees Union* v. *Von Raab*, 489 U. S. 656, 661 (1989) (loss of promotion of position transfer for drug test failure); *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602, 611 (1989) (results of breath or urine tests may be used in disciplinary proceedings against the tested railroad employees). The special needs searches struck down under the Fourth Amendment also involved potentially adverse consequences for those searched. See *Ferguson* v. *Charleston*, 532 U. S. 67, 72-73 (2001) (possible use of drug tests of pregnant women in criminal prosecutions); *Chandler* v. *Miller*, 520 U. S. 305, 309 (1997) (positive drug test disqualifies candidate for public office). Administrative searches are similarly adverse for their subjects. See, *e.g.*, *New York* v. *Burger*, 482 U. S. 691, 694-696 (1987) (criminal prosecution from fruits of administrative search).

The checkpoint in this case has a different position with respect to its subjects. No adverse consequences were intended for anyone going through the checkpoint. The officers did not ask for license, registration, or other identifying information from the drivers. See *supra*, at 2. Nor did they question the drivers or make a visual inspection of the vehicles' interiors. If the perpetrator of the hit and run drove through the checkpoint, the officers would not be able to find this out absent a spontaneous confession. The defendant in this case was arrested for drunk driving for reasons unrelated to the purpose of the checkpoint. Nearly hitting an officer with a vehicle during the slowed traffic of a checkpoint can only raise a justifiable suspicion that something is wrong with the driver.

Had Lidster not driven so badly, his intoxication would have remained undiscovered.[3]

The unique context of the informative checkpoint is important for two reasons. First, the nonadversarial nature of the stop diminishes the invasion of privacy. The means needed to inform citizens in this case are less invasive than those used to ferret out drug dealers, a topic discussed later. See Part II-B, *infra*. Informative stops are simply inherently less invasive than adversarial checkpoints.

Secondly, the informative checkpoint's purpose limits its potential scope. It was intended to find eyewitnesses to a single highway crime. The most logical place to find eyewitnesses to the accident is on the street on which it happened. Its timing is as constrained as its location. Conducting the checkpoint at the same time and day of the week as the incident maximizes the chance of finding a motorist who was driving near the accident as part of his or her regular commute from work. See *supra*, at 2. Since people can have different driving patterns for each day of the week, it made sense to conduct the checkpoint on the same day of the week that the accident happened. Once the police decided to establish the checkpoint, there was little discretion as to when or where it would take place, thus achieving a key purpose of the Fourth Amendment. See *Delaware* v. *Prouse*, 440 U. S. 648, 653-654 (1979) ("The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials").

Although the checkpoint was set up to solve a crime, it does not carry the danger to the Fourth Amendment found in the general crime control interest of *Edmond*. First, this checkpoint

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3. Because Lidster's bad driving provided a basis of individualized suspicion prior to his actual stopping, there may have not been a suspicionless seizure in this case. See *California* v. *Hodari D.*, 499 U. S. 621, 629 (1991). However, the state did not petition for certiorari on this point.

is focused on a traffic crime, tying it to the roads. This closely parallels what distinguishes the constitutionally acceptable drunk driving checkpoint from the unconstitutional narcotics checkpoint. *Edmond* distinguished the interest in apprehending drunk drivers in *Sitz* from a general interest in crime control by the sobriety checkpoint's close connection to highway safety. See *Edmond*, 531 U. S., at 43 ("immediate, vehicle-bound threat to life and limb"). The person sought in the present case had already killed someone on the highway, demonstrating a clear and present danger to motorists and pedestrians. That driver's lack of responsibility in leaving the scene compounded the threat.

This Court has recognized that it may be possible to obstruct a road in order to apprehend a felon. Dicta in *Edmond* stated that police may block a particular route in order to catch a fleeing dangerous criminal. See 531 U. S., at 44. In *Brower* v. *County of Inyo*, 489 U. S. 593, 599 (1989), this Court left open whether a roadblock that led to the death of the fleeing criminal violated the Fourth Amendment. A sufficient criminal law interest should allow the authorities to restrict traffic in order to catch a criminal.

> "If we assume, for example, that a child is kidnaped and the officers throw a roadblock about the neighborhood and search every outgoing car, it would be a drastic and undiscriminating use of the search. The officers might be unable to show probable cause for searching any particular car. However, I should candidly strive hard to sustain such an action, executed fairly and in good faith, because it might be reasonable to subject travelers to that indignity if it was the only way to save a threatened life and detect a vicious crime. But I should not strain to sustain such a roadblock and universal search to salvage a few bottles of bourbon and catch a bootlegger." *Brinegar* v. *United States*, 338 U. S. 160, 183 (1949) (Jackson, J., dissenting).

While the exigency is less in this case, so is the intrusion. *Amicus* is not asking that the police be allowed to block a road

and search motorists at will. When there is a serious accident, an informative stop may be reasonable after the appropriate Fourth Amendment interests are balanced. See Part III, *infra*.

The Illinois Supreme Court tried to rationalize its holding with a slippery slope argument:

> "Should the police have been allowed to set up roadblocks to obtain information from potential witnesses for each murder? What of a robbery, an aggravated criminal sexual assault, an arson or any other serious crime? According to the State, for a period of at least a week after each crime, police could set up roadblocks with the specific purpose of making inquiries of persons who were possibly witnesses to a crime. The troubling specter then arises that the streets of Cook County, or at least the streets of Chicago, would be adorned with roadblocks, an outcome clearly unacceptable under *Edmond*." *People* v. *Lidster*, 779 N. E. 2d 855, 860 (Ill. 2002).

This substitutes hyperbole for analysis. The checkpoint was set up to find information about an automotive homicide. Although automobiles are a significant source of criminal conduct, the vast majority of serious crimes are not automobile related. The crimes of "robbery . . . aggravated criminal sexual assault [or] arson," see *ibid.*, are unlikely to be committed on the road with a vehicle. Crimes involving automobiles are most likely to be violations of hit and run regulations, collisions leading to homicide or assault charges, vehicle theft, flight from some other offense, transporting contraband or illegal immigrants, driving under the influence, or misdemeanor traffic offenses like reckless driving. Two of these crimes, driving under the influence and transporting illegal immigrants, can support checkpoints, while transporting contraband cannot. Of the remainder, traffic offenses and motor vehicle thefts are not serious enough to warrant a checkpoint, while certain fleeing felons can be stopped with checkpoints or roadblocks. Only hit and run, vehicular homicides, or serious assaults with vehicles are implicated by the informative checkpoint in this case.

The Illinois Supreme Court's slippery slope argument also imperils *Sitz*, as drunk driving checkpoints can be established throughout the country. See *supra*, at 9. What distinguishes *Sitz* from *Edmond* is the sobriety checkpoint's close tie to the road, see *supra*, at 9, the same feature that is present in this case.

The checkpoint's focus on a narrow band of automotive crime will keep it from consuming the Fourth Amendment. It is focused on a particular area, a particular time, and on a small, discrete set of criminal activity. This is a far cry from what the *Edmond* decision sought to stop.

B. Less Intrusive.

The minimal intrusion of the seizure in this informative checkpoint also distinguishes it from *Edmond*. *Edmond* did not involve a search, see 531 U. S., at 40, but the level of intrusion was significant when compared to the present case. A "sniff by a dog that simply walks around a car [may be] 'less intrusive than a typical search,' " *ibid.* (quoting *United States* v. *Place*, 462 U. S. 696, 707 (1983)), but it is still an effort to find evidence of criminality from a motorist rather than give him or her a leaflet about a fatal accident. In *Place*, the dog sniff came after a stop supported by reasonable suspicion. See 462 U. S., at 706. The issue was whether the sniff had to be supported by probable cause. See *ibid.* Holding that it was not a search requiring probable cause, this Court recognized that there was some intrusion, but that it fell short of a search.

> "Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search. Moreover, the sniff discloses only the presence or absence of narcotics, a contraband item. Thus, despite the fact that the sniff tells the authorities something about the contents of the luggage, the information obtained is limited. This limited disclosure also ensures that the owner of the property is not subjected to the embarrassment and inconvenience entailed in less discriminate and more intrusive investigative methods." *Id.*, at 707.

This holding is correct. Canine sniffs should not warrant extra justification under the Fourth Amendment if the stop that makes the sniff possible is already constitutional. However, the sniff in *Edmond* involves some intrusion that does not exist in this case.

Seizures vary in the degree of privacy they invade. Some seizures involve a total invasion of physical privacy—the death of the suspect, see, *e.g.*, *Brower*, 489 U. S., at 594; *Tennessee* v. *Garner*, 471 U. S. 1, 3 (1985), while others are much less physically intrusive. See, *e.g.*, *Terry* v. *Ohio*, 392 U. S. 1 (1968). Seizures also vary by how much they invade the individual's feelings of privacy or security. Checkpoints have a more secure Fourth Amendment foundation than roving stops because checkpoints generate apprehension in motorists due to the checkpoint's public display of authority and its application to all motorists. See *Prouse*, 440 U. S., at 657.

The informative checkpoint causes even less consternation than immigration, drug, or drunk driving checkpoints. Drivers subject to the informative checkpoint are not examined for evidence that they are drunk, harboring illegal aliens, or carrying illegal drugs. The fact that they are instead informed about a fatal accident on this highway and given the opportunity to help solve an unsolved crime can only further minimize the apprehension and frustration that comes with a traffic stop.

The seizure in this case lasts no more than 15 seconds, see *supra*, at 2, noticeably less than the two- to three-minute average in *Edmond*. See 531 U. S., at 36. This difference is a result of all the information that the drug checkpoint sought to extract from innocent drivers. In addition to the canine sniff, the narcotics stop also involved request for license and registration, and an open air examination of the vehicle. See *id.*, at 35. Simply handing out leaflets will take much less time and involve much less inconvenience for the drivers.

In all prior checkpoint, special needs search, and administrative search decisions there was some adversity between the individual and those conducting the stop or search. See *supra*, at 11-12. They all involved some effort to determine whether the stopped or searched individuals were violating the law or official policy. Those subject to the intrusion knew that they were being probed for evidence that they had done something wrong. See, *e.g.*, *Edmond*, 531 U. S., at 35 (motorist informed that he or she is being stopped at a drug checkpoint). Even so, this type of intrusion could be labeled "minimal" in an appropriate case. See *Sitz*, 496 U. S., at 452. In *Sitz*, drivers were detained for about 25 seconds and checked for evidence of intoxication. See *id.*, at 447-448. If the *Sitz* intrusion is minimal, then the 10- to 15-second, nonadversarial checkpoint in the present case is less than minimal.

Stops of this brevity are commonplace on the highways. Drivers routinely make stops of this duration at traffic lights and stop signs. These traffic controls fit the definition of seizure, terminating an individual's freedom of movement through an intentionally applied show of authority. See *California* v. *Hodari D.*, 499 U. S. 621, 626 (1991). The public safety interest in regulating intersections and the minimal intrusiveness of the stops ensures that the Fourth Amendment is satisfied. The present checkpoint is a slightly more elaborate version of the same intrusion. Although it does not have the pervasive safety purpose of traffic controls, the informative checkpoint has its own internal safety measures that check its potential growth. See Part II-A, *supra*.

A seizure can be too minimal to warrant Fourth Amendment protections. For example, testing a trace amount of a substance to determine whether it is cocaine destroys the substance. This permanent deprivation of private property is a seizure that is separate from the initial seizure of the substance. See *United States* v. *Jacobsen*, 466 U. S. 109, 124-125 (1984). If the property is already lawfully detained, then the destruction of a minimal portion of it for testing survives Fourth Amend-

ment scrutiny. See *id.*, at 123. "Under these circumstances, the safeguards of a warrant would only minimally advance Fourth Amendment interests." *Id.*, at 125.

The Fourth Amendment operates on a continuum, with the greatest intrusions warranting the most protection. Searches typically require a warrant, see *New York* v. *Burger*, 482 U. S. 691, 702 (1987), while arrests require probable cause. See *Atwater* v. *City of Lago Vista*, 532 U. S. 318, 354 (2001). The lesser intrusion of the stop and frisk requires reasonable suspicion. See *Terry* v. *Ohio*, 392 U. S. 1 (1968). Searches can overcome the warrant and probable cause standard if there is a special need, see *Board of Education* v. *Earls*, 536 U. S. 822, 829 (2002), while an appropriate government interest will support a highway checkpoint after "a balancing of the competing interests at stake and the effectiveness of the program." *Edmond*, 531 U. S., at 47.

The present case is at the far end of that continuum. The minimal, nonadversarial intrusion makes for a less difficult experience than submitting to a sobriety, immigration, or narcotics checkpoint. This minor stop should not be treated like the more extensive seizures of the other checkpoints. While its purpose is sufficient to distinguish it from *Edmond*, even without this feature the reduced intrusion of the informative checkpoint also separates it from drug checkpoints.

III. This informational checkpoint was reasonable and therefore complied with the Fourth Amendment.

Successfully distinguishing *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000), see Part II, *supra*, does not end the analysis. *Edmond* relied on the improper purpose of the drug checkpoint to bypass the normal procedure for analyzing seizures that fall short of an arrest. "The reasonableness of seizures that are less intrusive than a traditional arrest [citations], depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary

interference by law officers.' " *Brown* v. *Texas*, 443 U. S. 47, 50 (1979) (quoting *Pennsylvania* v. *Mimms*, 434 U. S. 106, 109 (1977)). This standard applies to automotive checkpoints, see *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 450 (1990), so long as they are not motivated by an improper purpose. See *Edmond*, 531 U. S., at 47. The Illinois Supreme Court's holding that *Edmond* is indistinguishable from the present case made a reasonableness analysis unnecessary for its opinion. See *People* v. *Lidster*, 779 N. E. 2d 855, 861 (2002) (citing *Edmond*).

Brown provides the standard for testing the constitutionality of a seizure short of an arrest. "Consideration of the constitutionality of such seizures involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." 443 U. S., at 50-51. The "central concern" of the balancing test is "to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Id.*, at 51. The informative checkpoint readily satisfies these concerns. Checkpoints inherently limit an officer's opportunity to exercise discretion in an arbitrary manner. See *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 559 (1976). The purpose behind the informative checkpoint also limits the discretion of the police in a way that was absent in narcotics checkpoints. See Part II-A, *supra*.

The interest advanced by the checkpoint is substantial. This Court has already approved a checkpoint designed to catch or deter drunk drivers. See *Sitz*, 496 U. S., at 455. While drunk driving is a serious threat to public safety, see *id.*, at 451, it is also true that no one is directly harmed by the act of driving while intoxicated. People frequently drive while intoxicated without harming themselves or others. Thus in 2000, there were 1,471,289 arrests for driving under the influence, while the total arrests for all serious violent crimes was 625,132. See U. S. Dept. of Justice, Bureau of Justice Statistics, Sourcebook

of Criminal Justice Statistics 2001, Table 4.1, p. 342 (2002). The problem with drunk driving is the socially unacceptable risk of death or injury that accompanies intoxicated driving. This checkpoint does not address merely potentially dangerous drivers. It addresses a proven menace to road safety—someone involved in a fatal accident who left the scene of the incident.

Although the informative checkpoint is only meant to apprehend one danger, and the *Sitz* checkpoint could apprehend more, see *Sitz*, 496 U. S., 448 (two arrests), this does not invalidate the present checkpoint. Each checkpoint must be analyzed on its own facts. The *Sitz* checkpoint had a greater potential for abuse and driver inconvenience, due to its nationwide scope. See *supra*, at 9. By comparison, the officers in this case had little discretion in the timing or placement of the informative checkpoint. See *supra*, at 13.

The second aspect of the *Brown* test, the checkpoint's efficiency in advancing the public interest, is not an invitation to second-guess police practice. "This passage from *Brown* was not meant to transfer from politically accountable officials to the courts the decision as to which among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger." *Id.*, at 453. The Fourth Amendment does not have a least intrusive means requirement. See *Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646, 663 (1995). Police only need to employ reasonable means in order to satisfy the Fourth Amendment.

An informative checkpoint is appropriate to the difficult problem posed by a fatal hit and run accident. The two best witnesses to the accident, the driver and the victim, are missing. Unlike a human who leaves DNA evidence or a fingerprint, an automobile is unlikely to leave similar identifying evidence unless a license plate falls off during the accident. Since the killing took place on a street, drivers at the time of the accident are the best source of potential eyewitnesses. While some of these potential eyewitnesses might live nearby, there is every reason to believe that most had no ties to the area other than

using the road where the accident occurred. The accident occurred near the time of a local commute. See *supra*, at 13. Also, the fact that one drives on a particular road is no guarantee that he or she lives near that street. Therefore, a door-to-door canvassing of the immediate area could only be marginally useful.

Publicity is the best solution. With enough publicity, an eyewitness to some part of the accident might have his or her memory jogged enough to come forward with relevant information. There are several sources of publicity—appeals to the public through the mass media, the internet, billboards, posting flyers on lampposts or other fixtures, and the informational checkpoint used in this case. Mass media appeals are cheap and widespread, but the police lack control over the content of the appeal, and it is contingent on the cooperation of local editors and publishers. The internet is cheap, but unlikely to reach actual witnesses. Advertisements are expensive and may be ignored, while posting flyers on fixtures are unlikely to reach many people. The checkpoint is not too expensive, and unlike any other means of communication, is targeted at the most fertile source of potential witnesses.

When balanced against the minimal intrusion of the stop, see Part II-B, *supra*, the informational checkpoint in this case is reasonable. It is an efficient way of trying to deal with a deadly driver, and it may be the only way for the victim's family to secure compensation for their loss. Nor does it pose the threat to the Fourth Amendment found in the drug checkpoint. Requiring a warrant or individualized suspicion would frustrate police efforts to inform the community, while doing little to protect individual privacy. This limited, focused attempt to inform the local population of a serious offense is reasonable. The Fourth Amendment requires no more.

CONCLUSION

The decision of the Illinois Supreme Court should be reversed.

July, 2003

Respectfully submitted,

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